Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Lowenthal	Analyst:	Kristina E. North	Bill Number:	AB 738
Related Bills:	See Legislative History	Telephone:	845-6978	Amended Date:	May 2, 2001
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Community Development Corporation Contribution Credit

SUMMARY

This bill would allow a credit equal to 50% of the certified amount contributed to a community development corporation.

This analysis does not address the bill's insurance tax law provision or the Treasurer's reporting requirement, as they do not impact the department's programs or state income tax revenue.

SUMMARY OF AMENDMENTS

The May 2, 2001, amendments:

- Replaced the specified annual minimum contribution level with authorization for the California Tax Credit Allocation Committee (the Committee) to annually establish the minimum as well as the maximum contribution levels;
- Added a requirement that the Committee give preference to applications proposing at least 50% of the contribution be used to improve the energy efficiency of a community facility;
- Replaced the $30 million limitation on the aggregate community investment tax credit annually allocated by the Committee with the amount appropriated to the fund by the Legislature in the annual budget bill; and
- Made other technical changes.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to encourage new private sector contributions to California's low-income communities.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be effective immediately upon enactment. The credit would apply to taxable years beginning on or after January 1, 2002, and before January 1, 2010.

Board Position:			Department Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Alan Hunter for GHG	05/11/01
____ N	____ OUA	__X__ PENDING		

POSITION

Pending.

SUMMARY OF SUGGESTED CHANGES

Two amendments providing technical changes to the Bank and Corporation Tax Law (B&CTL) are attached.

ANALYSIS

FEDERAL/STATE LAWS

Current state law provides various tax credits that are designed to provide tax relief for taxpayers who must incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research expenses credits).

The Committee currently allocates two state income tax credits. Both credits target low-income communities. **Current state law** allows a credit for the costs of constructing or rehabilitating low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. The credit is claimed over a four-year period. The Committee can allocate an aggregate maximum of $50 million per year, plus the unused or returned credit amounts from prior or current years. The Committee provides annual listings of qualified taxpayers to the Franchise Tax Board (FTB). Additionally, **current state law** allows a credit equal to 50% of the costs of constructing or rehabilitating farmworker housing. The Committee can allocate an aggregate maximum of $500,000 per year, plus the unused or returned credit amounts from prior or current years.

Current state law allows a taxpayer to claim a deduction for a charitable contribution made to organizations that are organized and operated exclusively for religious, charitable, educational, scientific, or literary purposes, for the prevention of cruelty to children or animals, to foster national or international amateur sports competition, and to federal, state, or local government entities. A charitable contribution includes gifts to, or for the use of, those entities.

THIS BILL

This bill would allow a credit to a taxpayer equal to 50% of the amount of a contribution to an eligible community development corporation as certified by the Committee.

This bill would define:

- "Eligible community development corporation" as a tax exempt, nonprofit corporation that:

  1) Sponsors, develops, renovates, or expands a community facility located in a low-income geographic area primarily benefiting low-income persons; or

  2) Operates programs primarily benefiting low-income persons and is certified either by the United States Department of Housing and Urban Development as an eligible community-based development organization (CBDO) or by the Committee to be substantially similar to a CBDO.

- "Control" as direct or indirect ownership of 50% or more of the total combined voting interests of the eligible community development corporation entitled to vote, or 50% or more of the eligible community development corporation's officers, directors, trustees, or key employees who are appointed by or are employees of the taxpayer.

- "Low-income persons" as people whose annual household income does not exceed 80% of the median for all households in the metropolitan area in which they reside, or for persons residing outside metropolitan areas in the State, as determined by the United States Department of Housing and Urban Development.

- "Low-income geographic area" as a census tract or other defined geographic area in which more than 50% of the households are comprised of low-income persons.

- "Community facility" as a facility where healthcare, childcare, educational, cultural, or social services are provided.

The Committee must establish the credit criteria; determine the eligibility of the taxpayer(s); allocate credits to eligible community development corporations; issue credit certificates to taxpayers, including the contribution amount qualified for the tax credit; and provide an annual listing to FTB containing the names, taxpayer identification numbers, amount contributed, and total amount of credit certified to each eligible taxpayer.

The Committee may annually establish a minimum and maximum contribution level applicable to any application filed. The aggregate credit amount certified to any one taxpayer in a taxable year may not exceed $500,000. The maximum aggregate amount allocable by the Committee is $30 million per year, and there are no provisions in the bill that would permit unused credit allocation amounts from a prior year to be carried forward and allocated by the Committee in a later year.

The Committee would be required to:

- encourage multiyear contribution commitments;

- give preference to taxpayers

  - certifying their aggregate contributions will exceed their average contributions in the prior three calendar years by an amount equal to or greater than the contribution identified in its current application for a tax credit certificate

  - proposing that 50% or more of the contribution be used to improve energy efficiency at a community facility; and

- establish reasonable reporting requirements.

The eligible community development corporation that is allocated a tax credit must provide the Committee with 1) a receipt for the contribution from the taxpayer; and, 2) if the contribution was for facility support, evidence that construction has been initiated.

The taxpayer must retain the credit certification provided by the Committee and make it available to FTB upon request.

No deduction would be allowed for the amount of a contribution made for which this credit is allowed.

Any excess credit could be carried over for ten years.

IMPLEMENTATION CONSIDERATIONS

The department could implement this bill.

TECHNICAL CONSIDERATIONS

Subdivision (a) of the Bank and Corporation Tax Law (B&CTL) provisions inadvertently differs from subdivision (a) of the Personal Income Tax Law (PITL) section by providing a credit equal to 50% of a contribution "allocated a tax credit." The author's office has indicated that the credit should be equal to 50% of a contribution *certified* by the Committee. Amendment 1 is provided to change the B&CTL section to be consistent with the PITL and accurately reflect the author's intent.

The B&CTL section, subdivision (m), provides that no deduction would be allowed for any contribution "paid or incurred." However, a contribution is not "paid or incurred," it is "made." Amendment 1 is provided to make this change.

LEGISLATIVE HISTORY

AB 1080 (Villaraigosa, 1999/2000) would have created a similar tax credit as proposed by this bill. However, that provision was replaced by the teacher retention credit (which was subsequently chaptered).

OTHER STATES' INFORMATION

*Florida, Illinois, Massachusetts, Michigan, Minnesota***,** and *New York* do not allow a similar credit. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not specify a limitation on the amount of community development corporation contribution tax credits that could be allocated each year. The revenue impact of the bill would be determined by the amount of credits actually allocated each year and the amount of allocated credits that can be applied to reduce tax liabilities. Based on prior experience for the low-income housing credit, revenue losses from applied tax credits for the initial years would be significantly less than authorized allocations and would follow the pattern below assuming a $30 million annual limitation.

Estimated Revenue Impact of AB 738 As Amended May 2, 2001 [$ In Millions]			
2001/2002	2002/2003	2003/2004	2004/2005
minor loss	-$4	-$9	-$13

Minor loss is less than $500,000. Estimates do not include any losses attributable to insurance tax law.

LEGISLATIVE STAFF CONTACT

Kristina E. North
Franchise Tax Board
845-6978

Brian Putler
Franchise Tax Board
845-6333

Analyst Kristina E. North
Telephone # 845-6978
Attorney Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 730
As Amended May 2, 2001

AMENDMENT 1

On page 8, line 32, strikeout "contribution allocated a tax credit" and insert:

contribution, certified

AMENDMENT 2

On page 11, line 25, strikeout "paid or incurred" and insert:

made